IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

OP.No. 1717 of 1996(D)

PETITIONER:

M/S. CHEMMEENS (REGD.)
KOCHANGADI, COCHIN – 5 REPRESENTED BY
PROPRIETOR SHRI C. CHERIAN. ***(SUBSTITUTED)*.***

(***THE NAME OF THE PETITIONER IS SUBSTITUTED AS M/S. CHEMMEENS (REGD.) KOCHANGADI, COCHIN -5 REPRESENTED **BY SHRI P.C. CHERIAN** AS PER ORDER IN I.A. 11846 OF 2007 DATED 05.09.2007.)

BY ADV. SRI.ROY CHACKO

RESPONDENTS:
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1. THE REGIONAL EXECUTIVE,
KERALA FISHERMEN'S WELFARE FUND BOARD,
REGIONAL OFFICE, ERNAKULAM.

2. STATE OF KERALA REPRESENTED BY
ITS CHIEF SECRETARY, SECRETARIAT,
TRIVANDRUM.

3. DEPUTY TAHSILDAR (RR),
TALUK OFFICE, KOCHI.

R1 BY ADV. SRI.P.SANTHALINGAM, SC.
BY SR. GOVERNMENT PLEADER SMT. R. MEERA.

THIS ORIGINAL PETITION HAVING COME UP FOR ADMISSION ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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O.P. No. 1717 OF 1996 & I.A. 11846 OF 2007

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Dated this the 5th September, 2007

J U D G M E N T

H.L. Dattu, C.J.:

I.A. 11846 OF 2007 IN O.P. 1717 OF 1996:

Allowed.

O.P.1717 OF 1996

M/s. Chemmeens (Regd.) Kochangadi, Cochin is a partnership firm. It is represented by its Managing Partner. The firm is engaged in the business of export of marine products to foreign countries.

2. In this Original Petition, the petitioner-firm primarily calls in question the vires of Section 4(2) of the Kerala Fishermen's Welfare Fund Act, 1985 (hereinafter referred to as Act) and also the revenue recovery notice issued by the respondents-authorities in view of the aforesaid provisions in the said Act. The vires of Section 4(2) and other provisions of the said Act was questioned by a similarly placed person before the Apex Court in **Koluthara Exports Ltd. vs. State of Kerala and others [(2002) 2 Supreme Court Cases 459]** . In the said decision, the court has declared Section 4(2) of the Act as unconstitutional.

3. In view of the law declared by the Apex Court, the reliefs sought for by the petitioner require to be granted and they are granted. Accordingly, the following:

O R D E R

I) Section 4(2) of the Kerala Fishermen's Welfare Fund Act, 1985 is declared as unconstitutional.

ii) Since revenue recovery notice is issued pursuant to the aforesaid provisions of the Act, it requires to be quashed and it is quashed.

iii) All pending Civil Miscellaneous Petitions are also disposed of.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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H.L. DATTU, C.J.&
K.T. SANKARAN, J.

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O.P. No. 1717 OF 1996

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Dated this the 5th September, 2007

J U D G M E N T